

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FOREST THOMAS,

Petitioner,

v.

PATRICK GRIFFIN,

Respondent.

No. 14-CV-3559 (KMK)

ORDER ADOPTING REPORT &
RECOMMENDATION

KENNETH M. KARAS, United States District Judge:

Forest Thomas ("Petitioner") has filed a Petition for a Writ of Habeas Corpus (the "Petition") pursuant to 28 U.S.C. § 2254, challenging his March 18, 2009 conviction, following a jury trial in Dutchess County Supreme Court, for two counts of assault in the first degree, pursuant to N.Y. Penal Law § 120.10(1) and (2). (*See generally* Pet. For Writ of Habeas Corpus ("Pet.") (Dkt. No. 1).) On appeal, the Appellate Division affirmed the judgment of conviction. *People v. Thomas*, 967 N.Y.S.2d 381 (App. Div. 2013). On August 28, 2013, the New York Court of Appeals denied Petitioner leave to appeal. *People v. Thomas*, 995 N.E.2d 860 (N.Y. 2013). Petitioner filed this Petition on May 1, 2014. (Pet.) Respondent filed a Memorandum of Law opposing the Petition on December 17, 2014. (Mem. of Law in Opp'n to Pet. ("Resp't's Mem.") (Dkt. No. 22).) On February 22, 2017, Petitioner requested a stay of this proceeding while he pursued certain claims in state court, (Dkt. No. 27), but this request was denied by The Honorable Paul E. Davison ("Judge Davison"), to whom the case was referred. (*See* Order Denying Stay 2 (Dkt. No. 29) ("Here, [P]etitioner has failed to show good cause for his failure to exhaust any additional claims at some earlier stage of the litigation."); *see also* Referral Order (Dkt. No. 13).) To evaluate Petitioner's claims regarding the suggestiveness of certain photo

arrays during the criminal investigation preceding his criminal trial, Judge Davison requested that Respondent provide those photo arrays for the record. (*See* Order (Dkt. No. 32).) Those photo arrays were filed with the Court. (*See* Dkt. No. 33.)

On December 30, 2019, Judge Davison issued a Report and Recommendation (“R&R”) recommending that this Court deny the Petition in its entirety. (R&R 20 (Dkt. No. 35).) Judge Davison provided notice that, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 8(b) of the Rules Governing Section 2254 cases, objections to the R&R were due within 14 days from the receipt of the R&R, or 17 days from the receipt of the same if the R&R was served upon the parties by mail, and that the failure to object or to request extensions of time to file objections within the relevant period of time would constitute a waiver of Petitioner’s right to appeal. (*Id.* at 21.) Petitioner has not filed any objections.

When no objections are filed, the Court reviews an R&R on a dispositive motion for clear error. *See Andrews v. LeClaire*, 709 F. Supp. 2d 269, 271 (S.D.N.Y. 2010); *Eisenberg v. New Eng. Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008). The Court has reviewed the Petition and R&R, and finding no substantive error, clear or otherwise, adopts the R&R.

Accordingly, it is hereby

ORDERED that the R&R, dated December 30, 2019, is ADOPTED in its entirety.

ORDERED that the Petition is DISMISSED.

ORDERED that because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue, *see* 28 U.S.C. § 2253(c)(2); *Lucidore v. N.Y. State Div. of Parole*, 209 F.3d 107, 111-12 (2d Cir. 2000), and the Court

certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith. It is further

ORDERED that the Clerk of the Court is respectfully directed to mail a copy of this Order to Petitioner and close this case.

SO ORDERED.

Dated: January 25, 2020
White Plains, New York

A handwritten signature in black ink, appearing to read 'K. M. Karas', is written over a horizontal line.

KENNETH M. KARAS
United States District Judge